

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 29, 2006 Session

**IN RE: BERTHA ROBERSON, DECEASED**

**Direct Appeal from the Chancery/Probate Court for Sumner County  
No. 89C-236 Tom E. Gray, Chancellor**

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**No. M2005-00607-COA-R3-CV - Filed May 3, 2006**

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The probate court construed a reference to “Mary Todd” in testator’s Will as referring to testator’s grandmother, and not testator’s mother. It also determined that, upon the death of testator’s son, son’s heirs did not take the remainder of a trust established by testator for son’s welfare. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery/Probate Court Affirmed;  
and Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J. and DONALD P. HARRIS, SR. J., joined.

Dennis W. Powers, Gallatin, Tennessee and John R. Phillips, Jr., Gallatin, Tennessee, for the appellants, Sue S. Chambers and Frank A. Wright.

Nathan Harsh and Gwynn K. Smith, Gallatin, Tennessee, for the appellee, Samuel Robert Gilmore, Executor of the Estate of Bertha Roberson.

**MEMORANDUM OPINION<sup>1</sup>**

This dispute concerns the interpretation of a Will executed by Bertha Bradley Chambers Roberson (Ms. Roberson) in 1975. On April 4, 1975, Ms. Roberson, her husband Lorin G. Roberson (Mr. Roberson), and her mother Mary Elizah Todd Bradley (Ms. Bradley) each executed a Will. Ms.

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<sup>1</sup>**RULE 10. MEMORANDUM OPINION**

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Bradley was one of five children born to Mary Eliza Bruce Todd. In her Will, Ms. Bradley devised and bequeathed all property to Ms. Roberson, her only child. Ms. Bradley died in 1978.

Ms. Roberson had one son, Frank Chambers (Mr. Chambers), from a previous marriage. Mr. Chambers was forty-five years of age when Ms. Roberson's Will was executed. Mr. Chambers was the father of a child, Appellant Frank Wright (Mr. Wright), born out of wedlock. Mr. Wright was twenty-three years of age when Ms. Roberson executed her Will. Mr. Chambers was married to Appellant Sue Chambers; no children were born of the marriage.

In her 1975 Will, Ms. Roberson devised and bequeathed all property to her husband, Mr. Roberson. She further directed that should Mr. Roberson predecease her, all assets should be invested in a trust for the lifetime of her son, Mr. Chambers. Ms. Roberson's Will further directed:

AFTER TERMINATION of the above trust, I will, devise and bequeath any funds remaining in the hands of my TRUSTEE which have been paid over to my EXECUTOR be distributed as follows:

- (a) The sum of THREE THOUSAND (\$3,000.00) DOLLARS to CORUM HILL BAPTIST CHURCH . . . .
- (b) ONE-THIRD (1/3) of the remainder to the HEIRS of LORIN G. ROBERSON . . . .
- (c) THE remaining TWO-THIRDS (2/3) to the maternal heirs of BERTHA ROBERSON, who are designated as the "MARY TODD HEIRS" with the same being determined upon the death of BERTHA ROBERSON and NOT at the termination of the trust.

Mr. Roberson predeceased Ms. Roberson in 1978. Upon Ms. Roberson's death in March 1984, Samuel Gilmore (Mr. Gilmore), a descendant of Mary Eliza Bruce Todd, was appointed Trustee pursuant to Ms. Roberson's Will. Mr. Gilmore maintained the trust until Mr. Chambers' death on January 23, 2004.

On February 13, 2004, Mr. Gilmore, acting as Trustee and Executor of Ms. Roberson's Will, filed a petition in Probate Court for Sumner County to determine the rightful "Mary Todd Heirs" to take the assets remaining in the trust under Ms. Roberson's Will.<sup>2</sup> Following a hearing in July 2004, the trial court found that the "Mary Todd Heirs" were the heirs of Ms. Roberson's grandmother, Mary Eliza Bruce Todd. The trial court also determined that it was the "clear intention of . . . . Bertha Roberson, that no remaining trust funds vest in Frank Allen Chambers and no issue of Frank Allen Chambers take a share." Final order was entered in the matter on January 27, 2005.

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<sup>2</sup>The total cash assets of the trust were in excess of \$400,000.

Appellants Sue S. Chambers and Frank A. Wright (“Appellants”) filed timely notices of appeal to this Court. We affirm.

### *Issues Presented*

Appellants present the following issues for our review:

- (1) Whether the trial court erred in interpreting that the testatrix, Bertha Roberson, intended her “maternal heirs” to be determined from her grandmother.
- (2) Whether the trial court erred in excluding Frank Chambers, the testatrix’s son, and his son, Frank A. Wright, as “maternal heirs.”

### *Standard of Review*

When construing a Will, the court’s goal is to ascertain the intention of the testator, and all other rules of construction yield to this rule. *Harris v. Bittikofer*, 541 S.W.2d 372, 384 (Tenn. 1976; *In re Crowell*, 154 S.W.3d 556, 559 (Tenn. Ct. App. 2004). The intentions of the testator are “to be gleaned from the entire instrument and the attendant circumstances” and are the “overriding consideration” in a Will construction case. *Harris*, 541 S.W.2d at 384.

We review the trial court’s findings of fact *de novo*, with a presumption of correctness. Tenn. R. App. P. 13(d); *Berryhill v. Rhodes*, 21 S.W.3d 188, 190 (Tenn. 2000). We will not reverse the trial court’s factual findings unless they are contrary to the preponderance of the evidence. *Id.* Insofar as the trial court’s determinations are based on its assessment of witness credibility, appellate courts will not reevaluate that assessment absent clear and convincing evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). Our review of the trial court’s conclusions on matters of law, however, is *de novo* with no presumption of correctness. *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005). We likewise review the trial court’s application of law to the facts *de novo*, with no presumption of correctness. *State v. Thacker*, 164 S.W.3d 208, 248 (Tenn. 2005).

### *Analysis*

We first consider Appellants’ assertion that the reference to “maternal heirs” in Ms. Roberson’s Will refers to the heirs of Ms. Roberson herself. We agree with the trial court that to construe “maternal heirs” as narrowly as Appellants suggest renders the reference to “Mary Todd” in the same provision wholly superfluous and meaningless. A plain reading of the Will prohibits this construction.

Appellants alternatively assert the reference to “Mary Todd” is a reference to Ms. Roberson’s mother, Mary Todd Bradley, and not to Ms. Roberson’s grandmother, Mary Eliza Bruce Todd. Upon

review of the record, we cannot say the evidence preponderates against the trial court's determination that, as a factual matter, "Mary Todd" was Ms. Roberson's grandmother, Mary Eliza Bruce Todd.

The trial court found that Ms. Roberson's mother, Mary Todd Bradley, was known as "Mazie Bradley" or "Mrs. F. A. Bradley" or "Mary E. Bradley" and not "Mary Todd." Although Mary Eliza Todd, who died in 1950, was also known as "Eliza," she generally was known as "Muh Todd." Nothing in the record suggests that, when Ms. Roberson executed her Will in 1975 at the age of 63, Ms. Roberson would have referred to her mother, Mary Bradley, as "Mary Todd." We affirm on this issue.

We also affirm the trial court's determination that, in light of the circumstances surrounding the execution of the three Wills in 1975, Ms. Roberson intended that Frank Wright was not to take under her Will. Ms. Bradley devised and bequeathed all of her property to her only child, Ms. Roberson. In the event Ms. Roberson predeceased her, Ms. Bradley devised and bequeathed her property to her son-in-law, Mr. Roberson. When Ms. Bradley died, all of her property went to Ms. Roberson.

In her Will, Ms. Roberson devised and bequeathed all of her property to her husband to be absolutely his in fee simple. Item 4 of the Will provided for the establishment of a trust for the welfare of Mr. Chambers in the event Mr. Roberson predeceased Ms. Roberson. Item 5 of the Will established a spendthrift provision. When the Will was executed, Ms. Roberson was 63 years of age, had one son, Mr. Chambers, who was married to Sue Chambers. The Chambers had no children, but Mr. Chambers had a son born out of wedlock, Frank Wright, who was known to Ms. Roberson. The trial court stated:

Bertha Roberson was an only child and when she made her will she was 63 years old. She made provision for her son, Frank Allen Chambers, but did not give him any type of power of appointment as to the trust. She provided a spendthrift clause. . . . directed that he have the house and contents for his lifetime. She did not give that house and contents outright to him. The maternal grandmother of Frank Allen Chambers made no provision for him in her will.

In light of the entirety of the circumstances, we agree with the trial court that Ms. Roberson did not intend for Mr. Chambers' heirs to take any portion of the trust upon Mr. Chamber's death. Rather, the remainder of the trust was devised to the remaining heirs of Ms. Roberson's grandmother, Mary Todd.

### ***Holding***

In light of the foregoing, we affirm the judgment of the trial court. Costs of this appeal are

taxed to the Appellants, Sue S. Chambers and Frank A. Wright, and their sureties, for which execution may issue if necessary.

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DAVID R. FARMER, JUDGE